

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

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SON VAN NGUYEN,

NO. CR. 99-0433-WBS

Petitioner,

v.

ORDER RE: APPOINTMENT OF
COUNSEL

UNITED STATES OF AMERICA,

Respondent.

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Petitioner Son Van Nguyen moves for appointment of counsel pursuant to 18 U.S.C. § 3006A(a)(2)(B) in connection with petition for relief under 28 U.S.C. § 2255. The court has discretion to appoint counsel to represent any financially eligible person seeking relief under § 2255 if the court determines the "interests of justice so require." Weygandt v. Look, 718 F.2d 952, 954 (9th Cir. 1983) (citing 18 U.S.C. § 3006A).

In deciding whether to appoint counsel, the court must evaluate the likelihood of success on the merits as well as the ability of the petitioner to articulate his claims pro se in

1 light of the complexity of the legal issues involved. Id.
2 (citing Maclin v. Freake, 650 F.2d 885, 887-88 (7th Cir. 1981);
3 Dillon v. United States, 307 F.2d 445, 447 (9th Cir. 1962)).
4 "These considerations are not separate and distinct from the
5 underlying claim, but are inextricably enmeshed with them." Id.
6 Should the court determine an evidentiary hearing is required,
7 counsel must be appointed. United States v. Duarte-Higareda, 68
8 F.3d 369, 370 (9th Cir. 1995) (citing Rule 8(c) of the Rules
9 Governing Section 2255 Proceedings, 28 U.S.C. foll. § 2255).

10 Petitioner argues that an evidentiary hearing will
11 required because he contends his court appointed counsel provided
12 ineffective assistance at the trial and appellate levels. To
13 obtain reversal of a conviction on the basis of ineffective
14 assistance of counsel, a convicted defendant must show: (1) that
15 counsel's performance was so deficient so as to fall below an
16 objective standard of reasonableness; and (2) that counsel's
17 errors were so serious so as to deprive the defendant of a fair
18 trial. Strickland v. Washington, 466 U.S. 668, 687 (1985).
19 There is a strong presumption that counsel's conduct falls within
20 the wide range of reasonable professional assistance. Id. at 689
21 (citations omitted). The Strickland standard is rigorous and
22 highly demanding. Kimmelman v. Morrison, 477 U.S. 365, 382
23 (1986); Paradis v. Arave, 20 F.3d 950, 959 (9th Cir. 1994).

24 Under the Strickland standard, petitioner has failed at
25 this stage of the proceeding to point to any professional
26 incompetence and prejudice in the conduct of his counsel, much
27 less the need for an evidentiary hearing. After examination of
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1 the motion and trial record, the court sees no merit in
2 petitioner's claims of ineffective assistance of counsel.
3 Therefore, the court finds that "interests of justice" do not
4 require appointment of counsel.

5 IT IS THEREFORE ORDERED that petitioner's motion for
6 appointment of counsel in connection with petition for relief
7 under 28 U.S.C. § 2255 be, and the same hereby is, DENIED.

8 DATED: August 6, 2007

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10 WILLIAM B. SHUBB
11 UNITED STATES DISTRICT JUDGE
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